Supreme Court, U.S.
FILED

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No.: _____

In the

SUPREME COURT OF THE UNITED STATES

In Re: WALTER RHEAMS, appearing through his duly qualified curator, HELEN RHEAMS, TAMMY RHEAMS, individually, JAMILAH MONET RHEAMS, through ALISHA MONIQUE THOMAS, and MR. and MRS. CECIL HARPER, *Petitioners*,

v.

OFFICER VICTOR MARLER, OFFICER JASON POE, S.A. LARRY JONES, SHERIFF WILLIE GRAVES, UNITED STATES OF AMERICA, and UNITED NATIONAL INSURANCE COMPANY, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

I. **May a trial court stay or dismiss an action brought under the provisions of 42 U.S.C. § 1983 on the basis that there are pending state criminal charges for which the petitioner may never stand trial due to his physical incapacity?**

II. **What is the bright-line test for determining whether a petitioner's right to relief under mandamus is clear and indisputable?**

PARTIES TO THE PROCEEDING

The following individuals are parties to the proceeding in the courts below:

Walter James Rheams, appearing through his duly qualified curator, Helen Rheams, Tammy Rheams, individually, Jamilah Monet Rheams, through Alisha Monique Thomas, and Mr. and Mrs. Cecil Harper; *Plaintiffs-Appellants*;

Officer Victor Marler, Officer Jason Poe, Special Agent Larry Jones, Sheriff Willie Graves, the United States of America, and United National Insurance Company; *Defendants-Appellees*.

CORPORATION DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Supreme Court Rules, by information and belief, Defendant-Appellee United National Insurance Company is a Pennsylvania-based corporation wholly owned by the United National Group, likewise, a Pennsylvania corporation. Sup. Ct. R. 29.6.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Walter James Rheams, appearing through his duly qualified curator, Helen Rheams, Tammy Rheams, individually, Jamilah Monet Rheams, through Alisha Monique Thomas, and Mr. and Mrs. Cecil Harper respectfully pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinions of the Court of Appeal for the Fifth Circuit (App. A) and the District Court for the Middle District of Louisiana (App. B) are not yet reported.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 16, 2002. Plaintiff-Appellants' petition for rehearing *en banc* was denied by that court on May 28, 2002. Thus, this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such

officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

STATEMENT OF THE CASE

I. Relevant Factual History

On the evening of September 21, 2000, Walter James Rheams, an African-American male, domiciled in East Baton Rouge Parish, Louisiana, crossed the parish line into East Baton Rouge Parish from Livingston Parish and entered the drive-way to Torrey Pines Trailer Park located in the city of Baton Rouge, Louisiana. At that time, Officers Victor Marler and Jason Poe, who were commissioned by the Violent Crimes Task Force division of the Federal Bureau of Investigation and under the supervision of Special Agent Larry Jones, attempted to apprehend Mr. Rheams in the execution of a bench warrant issued in a state court matter. It should be noted that both officers were operating unmarked vehicles at the time of this arrest.

In attempting to take Mr. Rheams into custody, said officers fired numerous shots into the back of the vehicle being driven by Mr. Rheams, who was unarmed. As a result of this barrage of gunfire, Mr. Rheams was shot in the back of the neck and his spinal cord was severed.

Due to this injury, Mr. Rheams was paralyzed from the neck down and must breathe with the assistance of a ventilator. As such, his vocal capacities are significantly limited. Not surprisingly, Mr. Rheams' ability to communicate with others regarding past events is all but non-existent.

Suit was filed on Mr. Rheams' behalf in state court against the officers for their use of excessive force. This action was then removed to the United States District Court for the Middle District of Louisiana.

Further, on July 12, 2002, the Honorable Bonnie

Jackson of Louisiana's Nineteenth Judicial District Court ruled that Mr. Rheams lacked the capacity to assist his counsel at trial and ordered that the criminal proceedings arising from his alleged attempt to murder the two officers by running his vehicle over them be held in abeyance until such time as he was able to stand trial. Otherwise, presumably said prosecution will remain open until Mr. Rheams passes away. (See App. C).

II. Relevant Procedural History

On November 1, 2000, suit was brought in Louisiana's Nineteenth Judicial District Court in and for the Parish of East Baton Rouge alleging violations of civil rights as well as other state and federal causes of action. The matter was thereafter removed to the United States District Court for the Middle District of Louisiana.

Thereafter, Plaintiffs sought production of documents from various law enforcement agencies including the East Baton Rouge Parish Sheriff's Department, the Tri-Parish Task Force, the Louisiana State Police Crime Lab, and the Louisiana State Police. The Plaintiffs' attempts, however, were met with motions to quash the subpoenas issued to the respective agencies.

On March 1, 2002, a status conference was held in the chambers of the magistrate wherein the issue was raised of whether subpoenas issued by the Plaintiffs in this matter would be quashed due to the pendency of criminal proceedings involving Plaintiff Walter James Rheams in Louisiana's Nineteenth Judicial District Court. Rather than handing down a ruling upon this issue at that time, the magistrate instructed the participants in the conference to submit briefs in support of their positions on the matter. As was understood, the deadline for submitting memoranda in support of quashing the Plaintiffs' subpoenas was Monday, March 11, with the following Monday, March

18, 2002, as the deadline for the Plaintiffs to respond to said memoranda.

On March 8, 2002, the East Baton Rouge Sheriff's Department timely filed its *Memorandum in Support of Objection and Motion to Quash Subpoena,* which sought to quash the Plaintiffs' subpoena directed to Deputy Don Strickland of the East Baton Rouge Parish Sheriff's Department. On March 15, 2002, the Plaintiffs submitted their *Memorandum in Opposition to Defense Motions to Quash Subpoenas* in response to the brief of the Sheriff's Department. However, prior to the Plaintiffs' submission of their memorandum, the trial court, on March 14, 2002 issued an *Order* granting the Sheriff's Department's motion to quash the subpoena directed to Deputy Strickland. At the time that the Plaintiffs submitted their brief, on March 15, 2002, as directed by the magistrate, they had not yet received notice of the Judge's previous *Order* of March 14, 2002.

As they were not afforded an opportunity to present their position prior to the district court's ruling, the *Plaintiffs' Motion to Alter or Amend Judgment of March 14, 2002* was timely filed in accordance with Rules 59 and 60 of the Federal Rules of Civil Procedure seeking the Court's reconsideration after the Plaintiffs had an opportunity to be heard as well. Despite the these efforts, on April 1, 2002, the trial court issued its *Judgment* in which it dismissed this matter pursuant to the Supreme Court's decision in the matter of Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (6/24/94). The trial court, however, in its ruling stated that, "if, for some reason, Heck does not apply, this case is stayed pending completion of the state court criminal proceedings which form the basis of this civil action." (See App. B).

On April 3, 2002, the Plaintiffs filed their *Petition for Writ of Mandamus to the United States District Court*

for the Middle District of Louisiana with the United States Court of Appeals for the Fifth Circuit seeking that the matter be ordered to proceed due to the fact that there was no basis for staying discovery or any other portion of this matter based upon the pending state court criminal proceedings. The Fifth Circuit denied the writ on April 16, 2002. (See App. A). Thereafter, the Plaintiffs' request for rehearing *en banc* was denied on May 28, 2002.

REASONS FOR GRANTING THE PETITION

I. The lower courts failed to follow the controlling authority of this Court.

The Panel, in denying the Petitioners' writ application, failed to adhere to the principles of law set forth by the Supreme Court in the matters of Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (6/24/94) and Edwards v. Balisok, 520 U.S. 641, 117 S.Ct. 1584, 137 L.Ed.2d 906 (5/19/97) as well as the state law applicable to Walter James Rheams' competency to stand trial.

In denying the Plaintiffs' petition for a writ of mandamus, the Fifth Circuit wrote:

> The Supreme Court indicated in Heck that there can be no § 1983 suit for damages for an alleged unreasonable seizure under the Fourth Amendment (which is exactly what Rheams's case is), **after the plaintiff is convicted of resisting arrest**. See Heck, 512 U.S. at 486 n. 6. The court defined resisting arrest as "intentionally preventing a peace officer from effecting a *lawful* arrest." Id. Rheams's case is similar to this and thus Heck indicates that his

> private suit would be barred if he were convicted. Therefore **we do not think that he can challenge the charges pending against him prior to their being invalidated**. [Emphasis added]. (See App. A).

This finding is erroneous for three reasons. First, Mr. Rheams has not been charged with resisting arrest; second, Heck was concerned not with pending criminal charges, but with outstanding criminal convictions; and finally, besides Heck, the appellate court failed to consider Edwards and other controlling precedents.

In reaching its decision to deny the writ application in this matter, the court of appeal ignored this Court's ruling in the matter of Edwards v. Balisok, 520 U.S. 641, 117 S.Ct. 1584, 137 L.Ed.2d 906 (5/19/97), wherein this Court specifically addressed whether § 1983 actions should be dismissed pending final disposition of parallel criminal proceedings and found, as a matter of law, that dismissal of a 42 U.S.C. § 1983 claim on the basis of a parallel state court criminal proceeding was error.

In an apparent effort to justify the action of the trial court, rather than relying on the ruling in Heck, the court of appeal looked to the doctrine set forth in the matter of Colorado River Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976); this doctrine, however, is inapplicable to Mr. Rheam's matter. In Colorado River, Justice Brennan wrote:

> "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication

> of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest." (Citing County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-189, 79 S.Ct. 1060, 1063, 3 L.Ed.2d 1163, 1166 (1959)).

Colorado River Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

As an abstention doctrine, Colorado River, may only be applied in extraordinary cases where a *lis pendens* situation (which does not lie between state and federal court cases) is presented.

In the matter of Gulfstream Aerospace Corporation v. Mayacamas Corp., 485 U.S. 271, 108 S.Ct. 1133, 99 L.Ed.2d 296 (1988), a buyer brought a first-filed contract action against the seller in state court. In turn, the seller brought suit on the contract against the buyer in federal court. The buyer sought dismissal of the second-filed federal court action on the basis of the Colorado River Abstention, which this Court found inapplicable:

> **This Court held in Colorado River that a federal court should stay or dismiss an action because of the pendency only in "exceptional" circumstances**, 424 U.S., at 818, 96 S.Ct., at 1246-47, and with **"the clearest of justifications,"** Id., at 819, 96 S.Ct., at 1247. . . . This Court never has intimated acceptance of petitioner's view that the decision of a party to spurn removal and bring a separate suit in federal court invariably

> warrants the stay or dismissal of the suit under the Colorado River doctrine. Moreover, petitioner has pointed to no other circumstance in this case that would require a federal court to stay the litigation. [Emphasis added by this author].

Thus, although Gulfstream appeared to have been a clear-cut case where the so-called "Colorado River Abstention" should have applied, this Court held otherwise, cautioning that this doctrine should only be applied in exceptional circumstances. In the matter at bar, no exceptional circumstances have been or can be shown. Moreover, in the present case, Mr. Rheams lacks capacity to proceed in the criminal trial due to the injuries that he has sustained.

Similarly in the matter of Murphy v. Uncle Ben's, Inc., 168 F.3d 734 (5th Cir. 2/25/99), the Fifth Circuit found that the trial court in that matter had abused its discretion in abstaining from hearing a Title VII age discrimination claim by staying that action pending resolution of a civil action filed by the same claimant in state court pursuant to a state statute that was analogous to Title VII. In reaching this determination, that court wrote:

> Because of the "virtual unflagging obligation of the federal courts to exercise the jurisdiction given them" as between state and federal courts, the rule is that "'the pendency of an action in state court is no bar to proceedings concerning the same matter in the Federal Court having jurisdiction.'" Colorado River, 424 U.S. at 817, 96 S.Ct. at 1236 (quoting McClellan v. Carlend, 217 U.S. 268, 282, 30 S.Ct. 501, 54 L.Ed. 762 (1910)). However, in

> "extraordinary and narrow" circumstances, a district court may abstain from exercising jurisdiction over a case when there is a concurrent state proceeding, based on considerations of "'[w]ise judicial administration, giving regard to conservation of jdicial resources and comprehensive disposition of litigation.'" Id. at 813, 816, 96 S.Ct. 1236 (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183, 73 S.Ct. 219, 96 L.Ed. 200 (1952)).

In the present matter, both the court of appeals and the district court failed to find extraordinary and narrow circumstances such as those that would even approach the standard set forth by this Court in Colorado River.

Additionally, this Court, in the matter of Deakins v. Monaghan, 484 U.S. 193, 108 S.Ct. 523, 98 L.Ed.2d 529 (1988), addressed the propriety of dismissing a § 1983 case on the basis of the abstention set forth in Younger v. Harris, 701 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) due to the pendency of a parallel state court criminal matter and found that dismissal of the § 1983 action was error. Recognizing that a state criminal proceeding may only provide equitable relief any action for damages would necessarily be separate, the Deakins Court, at 484 U.S. at 204 ruled:

> Even if the Younger doctrine required abstention here, **the District Court had no discretion to dismiss rather than to stay respondents' claims for monetary relief that cannot be redressed in the state court proceeding**. . . First, the speculation that the District Court, if allowed to retain jurisdiction, would "hover" intrusively about the state

> proceeding is based on the groundless assumption that the District Court would not hold up its end of the comity bargain. **Second, even if Pennhurst State Sch. and Hosp. V. Halderman, 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), would prevent the District Court from adjudicating respondents' state-law claims as petitioners contend, this would not require the dismissal of respondents' federal damages claims, which are substantial and sufficient to justify the District Court's retention of jurisdiction.** [Emphasis added by this author].

Thus, in the matter *sub judice*, the trial court had no legal discretion to dismiss Mr. Rheams' § 1983 action.

In Heck, mention was made of the Colorado River holding; in Edwards v. Balisok, 520 U.S. 641, 117 S.Ct. 1589, 137 L.Ed.2d 906 (5/19/97), Justice Scalia specifically condemned as statutorily infirm any orders staying a §1983 action pending the outcomes of parallel state court criminal proceedings. See Edwards, supra, at 520 U.S. at 649, 117 S.Ct. at 1589.

> Since we are remanding, **we must add a word concerning the District Court' s decision to stay this § 1983 action** while respondent sought restoration of his good-time credits, rather than dismiss it. **The District Court was of the view that once a respondent had exhausted his state remedies, the § 1983 action could proceed.** [Citations omitted.] **This was error. We reemphasize that § 1983**

> **contains no judicially imposed exhaustion requirement**, Heck, 512 U.S. at 481, 483, 114 S.Ct. at 2369, 2370-2371; **absent some other bar to the suit, a claim either is cognizable under § 1983 and should immediately go forward**, or it is not cognizable and should be dismissed. [Emphasis added].

Therefore, it is clear that the appellate court's reliance on Justice Scalia's Colorado River footnote was in error. As stated by this Court in Edwards, a claim that is cognizable under § 1983, such as the matter *sub judice*, should immediately go forward.

Additionally, the Edwards Court reemphasized that "§ 1983 contains no judicially imposed exhaustion requirement." In this case, by requiring disposition of the state court criminal proceeding prior to the adjudication of this action, the district court and the appellate court imposed the same judicially imposed exhaustion that the Edwards Court had declared infirm.

Both of the lower courts erred in finding that either or both a stay or dismissal of Mr. Rheams' § 1983 claim was legally permissible. Absent any basis to dismiss an action, it must proceed. Therefore, it was error for the district court to dismiss or stay any aspect of this action pending resolution of the state court criminal charges against Walter James Rheams.

II. The lower courts failed to consider the physical condition of Walter James Rheams, which renders him unable to stand trial; thus, no valid conviction may be obtained.

Notwithstanding the appellate court's mention of Mr. Rheams' paralysis in the introductory language of the April 16, 2002 writ denial, (See App. A), it is readily

evident that the true impact of Mr. Rheams' condition was not applied in the equation employed in determining that the Petitioners had not appropriately shown that they were entitled to relief under mandamus. As stated in the original petition in this matter, during his apprehension, Walter James Rheams was shot in the back of the neck, thus becoming paralyzed from the neck down. He is permanently dependant on a mechanical ventilator and has only minimal vocal capability. Furthermore, and perhaps most importantly, this condition is permanent. Pursuant to the state court's finding on July 12, 2002, Mr. Rheams is not competent to stand trial criminally. (See App. C).

Prior to this finding, during a hearing on March 19, 2002 in the state court matter, the Assistant District Attorney commented on the record that the State of Louisiana was not concerned with Mr. Rheams' condition, but that the criminal prosecution was to proceed due to the fact that attorneys involved in the federal court civil matter (the instant case) had been in contact with the District Attorney's office and requested that the prosecution be pressed so as to prevent discovery in the § 1983 action.

Clearly, the Respondents herein are pressuring the prosecution in the state criminal matter to proceed against an individual known to be incompetent to stand trial. Such tactics are a gross perversion of justice, if not a direct abuse of process.

In finding a stay proper, the lower courts fell into error in failing to consider the inescapable fact that Walter James Rheams will never be competent to stand trial criminally in state court; thus, although charges may remain in abeyance and pending against him, he will never be prosecuted. Conventional wisdom therefore dictates that "final disposition" of the state charges which would allow the stay to be lifted in the § 1983 action will only occur upon Mr. Rheams' death.

To suggest that Mr. Rheams may only bring a § 1983 action (or have one brought on his behalf) after his death is error and creates legal and logical absurdity. Therefore, justice may only be served pursuant to review by this Honorable Court.

III. The Petitioners' right to relief under a writ of mandamus is clear and indisputable.

As correctly stated by the appellate court in its Order of April 16, 2002, mandamus is an extraordinary remedy which should only be granted if a petitioner can show his right thereto is clear and indisputable. It has been long recognized that mandamus is appropriate when a trial court has declined to exercise its jurisdiction or has clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court. In re Terra Intern, Inc., 134 F.3d 302 (5th Cir. 1/26/98); U.S. v. Mulderig, 120 F.3d 154 (5th Cir. 8/15/97); In re Dresser Industries, Inc., 972 F.2d 540 (5th Cir. 8/21/92); Warren v. Bergeron, 831 F.2d 101 (5th Cir. 11/4/87). Applying this well established rationale to the matter *sub judice*, being that the trial court has dismissed the Petitioners' claims *in globo*, the prompt intervention of the appellate court was appropriate.

Herein, the trial court, in its *Order* of April 1, 2002, and on its own motion, dismissed the claims of the Petitioners based upon its erroneous finding that dismissal was required by the rule of law set forth by the Supreme Court. (See App. B)

As referenced in the appellate court's ruling of April 16, 2002, Heck, at 512 U.S. 486-487 provides:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused

> by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983 . . .

As is indicated in the foregoing language, Heck's primary concern is the preservation of previously obtained **convictions**. In the instant matter, no conviction can be obtained in the pending criminal proceedings against Walter James Rheams due to the fact that, because of the injuries he sustained after being shot in the back by the officers, he lacks the capacity to stand trial.

The linchpin of Heck is set forth, 512 U.S. at 486, 114 S.Ct. at 2370, as follows:

> We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution.

Thus, the Supreme Court was concerned with "finality and consistency" and "has generally declined to expand opportunities for collateral attack." Heck, 512

U.S. at 485, 114 S.Ct. at 2370. The test set forth by the Heck case is as follows:

> But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any **outstanding criminal judgment** against the plaintiff, the action should be allowed to proceed. Heck, 512 U.S. at 487, 114 S.Ct. at 2372. [**emphasis** added]

Thus, with regard to this case, the Defendants and state authorities which seek the protection of Heck must point out at least one "outstanding criminal judgment against the plaintiff" which may be invalidated by a final judgment rendered in this § 1983 action. This has not and cannot be done; thus, the Defendants have failed to meet the Heck burden. Nonetheless, the district court summarily disposed of the Petitioners' claims either dismissing them pursuant to the misapplication of Heck or staying the proceedings pending the resolution of the criminal matters.

This failure of the trial court to make a concrete determination as to how exactly it was to dispose of this matter constitutes an abuse of its discretion as well as its recalcitrant failure to exercise its jurisdiction. Further, such a convoluted judgment serves to prejudice the Petitioner's interest by confusion as to what the true status of the proceedings are -- stayed or dismissed.

This paradox, though specifically set forth in the appellate court's April 16, 2002 *Order*, was not addressed as a judicial irregularity. Therefore the appellate court fell into error by failing to compel the district court to take an affirmative stance on what its ruling actually was.

The trial court's misinterpretation of Heck's applicability to the facts of this case, especially when

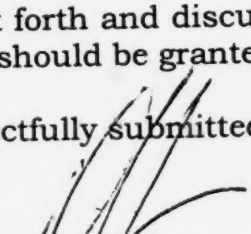
compounded with its apparent reluctance to issue a clear ruling, demonstrates a glaring abuse of discretion which has served to immeasurably prejudice the Petitioners herein. Therefore, the Petitioners' clear and indisputable right to relief under the extraordinary remedy of mandamus is apparent.

The appellate court's failure to apprehend these issues in reaching its determination constitutes error such that a rehearing of this matter is warranted. Therefore, the Petitioner herein so requests that this Court review this matter.

CONCLUSION

For the reasons set forth and discussed herein, the Petition for Certiorari should be granted.

Respectfully submitted,



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APPENDIX

A. Opinion of the court of appeal.

B. Opinion of the trial court.

C. Minute entry from the state court on the pending criminal action.

U.S. COURT OF APPEALS
FILED
APR 16 2002
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30340

In Re: HELEN RHEAMS, on behalf of Walter James Rheams; TAMMY RHEAMS; ALISHA MONIQUE THOMAS, on behalf of Jamilah Monet Rheams; CECIL HARPER; UNKNOWN HARPER, Mrs.,

Petitioners.

Petitioner for Writ of Mandamus to the United States District Court for the Middle District of Louisiana, Baton Rouge

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Before JOLLY and STEWART, Circuit Judges.

BY THE COURT[1]

Petitioners have appealed to this court for a writ of mandamus pursuant to 28 U.S.C. § 1651. They challenge the dismissal of their 42 U.S.C. § 1983 excessive use of force lawsuit against the respondents, arising out of the attempted arrest and shooting of

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[1] This order is being entered by a quorum of this court pursuant to 28 U.S.C. § 46(d).

Walter J. Rheams.[2] Rheams was paralyzed as a result. A criminal prosecution is also pending against Rheams in Louisiana state court for attempted first degree murder as a result of this incident. The district court found that because there was a pending state court criminal charge against Rheams that also formed the basis of his civil suit, dismissal was required by Heck v. Humphrey, 512 U.S. 477 (1994). Alternatively, the court found that if Heck does not apply, the case should be stayed pending the outcome of the criminal proceedings.

A writ of mandamus is an "extraordinary remedy." Adams v. Georgia Gulf Corp., 237 F.3d 538, 542 (5th Cir. 2001). We will grant a writ of mandamus "only if the petitioner can show its right to the writ is clear and undisputable. Mandamus is appropriate when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court." In re Dresser Industries, Inc., 972 F.2d 540, 542-43 (5th Cir. 1992) (citations omitted). Mandamus is not a substitute for appeal. A judgment dismissing the case has been entered by the district court, and Rheams can appeal his case via that route.[3]

Rheams has not shown that he has a clear and indisputable rights to the writ here. In Heck, the Supreme Court held that:

> [I]n order to recover damages for allegedly unconstitutional conviction or

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[2] Rheams also states that he asserted a malicious prosecution claim.

[3] Although Rheams argues in his petition "the dismissal is presumably without prejudice and is thus, not a final judgment," the district court's judgment clearly disposed of the entire case and is final, regardless of whether it is with prejudice or not.

> imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983 . . . .But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

512 U.S. at 486-87. As an example of a damages suit "for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," the Court described the following:

> An example of this [ ] category -- a § 1983 action that does not seek damages directly attributable to conviction or confinement but whose successful prosecution would necessarily imply that the plaintiff's criminal conviction was wrongful-- would be the following: A state defendant is convicted of and sentenced for the crime of resisting arrest, defined as intentionally preventing a peace officer from effecting a lawful arrest. He then brings a § 1983 action against the arresting officer, seeking

> damages for violation of his Fourth Amendment right to be free from unreasonable seizures. In order to prevail in this § 1983 action, he would have to negate an element of the offense of which he has been convicted. Regardless of the state law concerning res judicata, [ ] the § 1983 action will not lie.

Id. at 486 n. 6. As an example of "some other bar to the suit," the Court noted: "if a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstentation may be an appropriate response to the parallel state-court proceeding." Id. at 487 n. 8. (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)).

The officers claim that during their attempt to arrest Rheams pursuant to a warrant, Rheams drove his vehicle at them (i.e. used it as a deadly weapon), and that they shot at him in self-defense. Rheams claims that he was "ambushed: by the police, and that as he was attempting to drive around a car that was in his way, another car blocked him and the officers opened fire. In Heck, the plaintiff had already been convicted of a crime and brought a civil suit which called into doubt the validity of that conviction. Although Rheams has nto yet been convicted of a crime, we think that the principle of Heck applies and that Rheams cannot bring a civil suit that de facto challenges the validity of the criminal proceedings against him until, as in Heck, the criminal proceedings have been resolved in his favor. Therefore, we must examine whether Heck's civil suit challenges the validity of the attempted first-degree murder charges that have been brought against him.

The Louisiana code defines first-degree murder in part as: "When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, [or] peace officer . . . or when the specific intent to kill of inflict

great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee." La. Rev. State. § 14:30(2). The Louisiana code defines attempt as follows: "Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under these circumstances, he would have actually accomplished his purpose." La. Rev. Stat. § 14:27(A).

To succeed on an excessive force claim under 42 U.S.C. § 1983, a plaintiff bears the burden of showing: "(1) an injury (2) which resulted directly from the use of force that was excessive to the need and (3) the force used was ojectively unreasonable." Glenn v. City of Tyler, 242 F.3d 307, 314 (5th Cir. 2001) (citations and internal quotation marks omitted). "It is well settled that if a law enforcement officer uses excessive force in the course of making an arrest, the Fourth Amendment guarantee against unreasonable seizure is implicated." Harper v. Harris County, Tex., 21 F.3d 597, 600 (5th Cir. 1994 (citation omitted).

Rheams's excessive force claim would challenge the validity of the attempted first-degree murder conviction if he were convicted; i.e it would have been shown by the conviction that he had the specific intent to kill or to inflict great bodily harm upon a peace officer. In a § 1983 suit, Rheams would have to show that the force used was excessive to the need and was objectively unreasonable. However, if he was trying to kill the police officers, then it is hard to say that the force used by the police was excessive to the need. The Supreme Court indicated in Heck that there can be no § 1983 suit for damages for an unreasonable seizure under the Fourth Amendment (which is exactly what Rheams's case is), after the plaintiff is convicted of resisting arrest. See Heck, 512 U.S. at 486 n. 6. The court defined resisting arrest as "intentionally preventing a peace

officer from effecting a *lawful* arrest." Id. Rheams's case is similar to this and thus Heck indicates that his private suit would be barred if he were convicted. Therefore, we do not think that he can challenge the charges pending against him prior to their being invalidated.

Even if Heck does not apply, the district court may abstain from deciding this case, which indicates that Rheams does not have a clear right to a writ of mandamus. The Supreme Court indicated in Heck that in situations identical to this one, "abstention may be an appropriate response to parallel state-court proceedings." Heck, 512 U.S. at 487 n. 8. (Citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)). In Colorado River, the Supreme Court state that abstention may be appropriate based on

> principles . . . which govern in situations involving the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts. These principles rest on considerations of '(w)ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.' Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . . .'

424 U.S. at 817 (citations omitted). Given that the result of Rheams's criminal prosecution would determine whether his civil suit should even go forward, it would conserve judicial resources and further the comprehensive disposition of litigation to have the state court suit proceed, and to abstain from or stay the

federal court suit until afterward.

In sum, Rheams has not shown that he has a clear right to the writ of mandamus. Therefore, the petition for a writ of mandamus is

DENIED.

FILED
U.S. DIST. COURT
MIDDLE DISTRICT L.A.
02 APR. PM 2:12
SIGN _____
by DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

WALTER JAMES RHEAMS, ET AL CIVIL ACTION

VERSUS NUMBER 00-912-B-M2

OFFICER VICTOR MARLER

ORDER

On March 14, 2002 the Court issued an order requiring the parties to submit briefs on whether Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994) applies under the facts of this case. The parties have timely filed briefs on this issue.

The plaintiffs have also filed a motion seeking to have the Court reconsider its March 14, 2002 order. Because of the Court's ruling, this motion is denied as moot.

Since the record is clear that the plaintiff Walter James Rheams does have a pending state court criminal charge which also forms the basis of plaintiffs' civil suit. Heck clearly applies.

If, for some reason, Heck does not apply, the Court believes this case should be stayed pending completion of the state court criminal proceedings.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana, April 1, 2002.

s/ Frank J. Polozola
FRANK J. POLOZOLA, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

DKT. & ENTERED

DATE 4/1/02
NOTICE MAILED TO:
DATE ____ BY NMI

FJP
KC
Grodner
Hightower
Vincent

FRIDAY, JUNE 12, 2002

THE NINETEENTH JUDICIAL DISTRICT COURT, CRIMINAL SECTION IV, THE HONORABLE BONNIE JACKSON, JUDGE PRESIDING, WAS OPENED PURSUANT TO ADJOURNMENT. PRESENT IN COURT: MS KELLI TERRELL AND MS. KIM BROOKS, ASSISTANT DISTRICT ATTORNEYS; MS KATHY ROSS, COURT REPORTER; AND MS ALRET CANNON, MINUTE CLERK.

* * *

NO. 01-00-29
NO. 04-00-217
NO. 10-00-464
STATE OF LOUISIANA
VS.
WALTER J. RHEAMS

RE: STATUS CONFERENCE

CHARGE: POSSESSION OF MARIJUANA; FAILURE TO STOP; ATTEMPTED SECOND DEGREE MURDER; ATTEMPTED FIRST DEGREE MURDER (TWO COUNTS). This matter came before the Court for status, pursuant to previous assignment. The accused was represented bu Mr. James Standley. Ms. Kim Brooks, Assistant District Attorney, was present for the State of Louisiana. This matter came before the Court on a continuation of argument and ruling on the accused's capacity to assist counsel in his defense. The matter was submitted to the Court with argument from both counsel for the accused and counsel for the state. For oral reasons assigned, the Court found that the accused was incapable of assisting counsel in a defense. The Court ordered that the prosecution of this matter be held in abeyance until such time that the accused is capable of assisting counsel in his defense. On motion

of the state, the Court ordered that this matter be assigned for status on January 3, 2003 at 9:00 a.m.